



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

Sentrix Pharmacy and Discount LLC

Respondent Name

Berkshire Hathaway Homestate Insurance Co

MFDR Tracking Number

M4-17-3329-01

Carrier's Austin Representative

Box Number 06

MFDR Date Received

July 17, 2017

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The insurance carrier, Berkshire Hathaway failed to take final action within the 45-day period set forth in TAC §133.240. Specifically the claim was submitted on 5/5/17 and it was received by the provider on 5/7/17 (as verified by the attached proof of delivery) and no action was taken on the claim. The Pharmacy had submitted a second request for payment (on 6/26/17) based upon expiration of the 45-day period and it was received by the provider on 6/30/17 (as verified by the attached proof of delivery)."

Amount in Dispute: \$2,078.06

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "Carrier denies payment for the compounded pain cream because it was not medically necessary. Carrier further asserts that preauthorization for the compound drug was required but not sought by the Requestor. Finally, Carrier contends that the cost of the prescription compound was excessive and unreasonable."

Response Submitted by: Stone Loughlin Swanson

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
May 05, 2017	Pharmacy Services – Compound	\$2,078.06	\$1,718.06

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §133.240 sets out the requirements for payment or denial of a medical bill.
3. 28 Texas Administrative Code §134.502 sets out the procedures for pharmaceutical benefits.

4. 28 Texas Administrative Code §134.503 sets out the fee guidelines for pharmaceutical services.
5. Texas Labor Code §408.027 sets out provisions related to payment of health care providers.
6. The documentation submitted to the division does not include explanations of benefits.

Issues

1. Did Berkshire Hathaway Homestate Insurance Co take final action to pay, reduce, or deny the disputed services?
2. Is Sentrix entitled to additional reimbursement?

Findings

This medical fee dispute was filed by health care provider Sentrix Pharmacy and Discount LLC (Sentrix) on July 17, 2017. Sentrix on its table of disputed services asserts that it was not paid by Berkshire Hathaway Homestate Insurance Co for the compound it dispensed to a covered injured employee on May 05, 2017.

1. Sentrix asserts in its position statement “Specifically the claim was submitted on 5/5/17 and it was received by the provider on 5/7/17 (as verified by the attached proof of delivery) and no action was taken on the claim.”

According to Texas Labor Code Sec. 408.027(b), Berkshire Hathaway Homestate Insurance Co was required to pay, reduce, or deny the disputed services not later than the 45th day after it received the pharmacy bill from Sentrix. Corresponding 28 Texas Administrative Code §133.240(a) required Berkshire Hathaway Homestate Insurance Co to take **final action** by issuing an explanation of benefits not later than the statutorily-required 45th day. 28 Texas Administrative Code §133.2(6) defines final action as follows:

Final action on a medical bill—

- (A) sending a payment that makes the total reimbursement for that bill a fair and reasonable reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement); and/or
- (B) denying a charge on the medical bill.

Sentrix submitted a USPS tracking document indicating that USPS tracking number 9405 5118 9956 4792 2440 17 was delivered on May 7, 2017 at the address listed on the receipt. This evidence supports that Berkshire Hathaway Homestate Insurance Co received a pharmaceutical bill for the services in dispute on or about May 7, 2017. Berkshire Hathaway Homestate Insurance Co was not relieved of its requirement to pay, reduce, or deny the disputed services not later than the 45th day after it received the pharmacy bill from Sentrix, in accordance with Texas Labor Code Sec. 408.027(b). When the insurance carrier receives a medical bill, it is obligated to take the following actions pursuant to 28 Texas Administrative Code §133.240:

- (a) An insurance carrier **shall take final action** [emphasis added] after conducting bill review on a complete medical bill...**not later than the 45th day** [emphasis added] after the insurance carrier received a complete medical bill...
- (e) The insurance carrier **shall send the explanation of benefits** [emphasis added] in accordance with the elements required by §133.500 and §133.501 of this title...The explanation of benefits shall be sent to:
 - (1) the health care provider when the insurance carrier makes payment or denies payment on a medical bill...

Berkshire Hathaway Homestate Insurance Co argued in its position statement that “Carrier denies payment for the compounded pain cream because it was not medically necessary. Carrier further asserts that preauthorization for the compound drug was required but not sought by the Requestor.”

Berkshire Hathaway Homestate Insurance Co failure to timely issue an explanation of benefits to Sentrix creates a waiver of defenses that Berkshire Hathaway Homestate Insurance Co raised in its response to medical fee dispute resolution under 28 Texas Administrative Code §133.307(d)(2)(F):

The [carrier's] response shall address only those denial reasons presented to the requestor prior to the date the request for MFDR was filed with the division and the other party. Any new denial reasons or defenses raised shall not be considered in the review...

Absent any evidence that Berkshire Hathaway Homestate Insurance Co raised defenses that conform with the requirements of Title 28, Part 2, Chapter 133, Subchapter C, the division concludes that the defenses presented in Berkshire Hathaway Homestate Insurance Co position statement shall not be considered for review because those assertions constitute new defenses pursuant to 28 Texas Administrative Code §133.307(d)(2)(F).

2. Sentrix is seeking reimbursement for a compound dispensed on May 05, 2017 with the following ingredients:

- Salt Stable LS Base, NDC 00395602157, \$ 572.54
- Baclofen 4%, NDC 00395803243, \$342.05
- Amitriptyline 2%, NDC 00395804843, \$87.55
- Ketoprofen 10 %, NDC 00395805643, \$250.80
- Amantadine 8 %, NDC 00395805843, \$465.12
- Gabapentin 5 %, NDC 10695003507, \$360.00

The division finds that NDC 10695003507 is not a valid national drug code (NDC) as required by 28 Texas Administrative Code §134.502(d)(1). Therefore, this ingredient will not be considered for reimbursement.

28 Texas Administrative Code §134.503 applies to the compound in dispute and states, in pertinent part:

- (c) The insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescription drugs the lesser of:
- (1) the fee established by the following formulas based on the average wholesale price (AWP) as reported by a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed:
 - (A) Generic drugs: $((\text{AWP per unit}) \times (\text{number of units}) \times 1.25) + \4.00 dispensing fee per prescription = reimbursement amount;
 - (B) Brand name drugs: $((\text{AWP per unit}) \times (\text{number of units}) \times 1.09) + \4.00 dispensing fee per prescription = reimbursement amount;
 - (C) When compounding, a single compounding fee of \$15 per prescription shall be added to the calculated total for either paragraph (1)(A) or (B) of this subsection; or
 - (2) notwithstanding §133.20(e)(1) of this title (relating to Medical Bill Submission by Health Care Provider), the amount billed to the insurance carrier by the:
 - (A) health care provider; or
 - (B) pharmacy processing agent only if the health care provider has not previously billed the insurance carrier for the prescription drug and the pharmacy processing agent is billing on behalf of the health care provider.

The compound in dispute was billed by listing each drug included in the compound and calculating the charge for each drug separately as required by 28 Texas Administrative Code §134.502(d)(2).

Each ingredient is listed below with its corresponding reimbursement amount as applicable.

Ingredient	NDC & Type	Price/ Unit	Total Units	AWP Formula §134.503(c)(1)	Billed Amt §134.503 (c)(2)	Lesser of (c)(1) and (c)(2)
Salt Stable LS Base	00395602157 Brand Name	\$3.36	170.40 gm	$\$3.36 \times 170.4 \times 1.09 = \624.07	\$572.54	\$572.54
Baclofen 4%	00395803243 Generic	\$35.63	9.60 gm	$\$35.63 \times 9.60 \times 1.25 = \427.56	\$342.05	\$342.05

Amitriptyline 2%	00395804843 Generic	\$18.24	4.80 gm	\$18.24 x 4.80 x 1.25 = \$109.44	\$87.55	\$87.55
Ketoprofen 10%	00395805643 Generic	\$10.45	24.00 gm	\$10.45 x 24.00 x 1.25 = \$313.50	\$250.80	\$250.80
Amantadine 8%	00395805843 Generic	\$24.23	19.20 gm	\$24.23 x 19.20 x 1.25 = \$581.40	\$465.12	\$465.12
Total						\$1,718.06

The total reimbursement is therefore \$1,718.06. This amount is recommended.

Conclusion

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$1,718.06.

ORDER

Based on the submitted information, pursuant to Texas Labor Code Sec. 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services in dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$1,718.06, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

Authorized Signature

_____	_____	11/21/2017
Signature	Medical Fee Dispute Resolution Officer	Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, 37 *Texas Register* 3833, applicable to disputes filed on or after June 1, 2012.

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.